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Secretary Marlene H. Dortch
Attention: Leslie Smith
Federal Communications Commission
Room 1-A804
445 12th St S.W.
Washington, D C 20554

Federal Communications Commission
Office of the Secretary

Re: *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991*

Dear Secretary Dortch:

The American Health Care Association (AHCA) submits the following comments in support of the American Society of Association Executives' (ASAE) petition for reconsideration (Petition) of the Federal Communications Commission's (FCC) recent changes to the *Rules and Regulations Implementing the Telephone Consumer Protection Act (TCPA) of 1991* published on July 25, 2003 (68 *Fed Reg* 44144). ASAE's Petition was filed with the FCC on August 20, 2003, and requests reconsideration of "the applicability of the unsolicited facsimile advertisement rules to tax-exempt nonprofit organizations, and as a consequence, to expressly hold that unsolicited facsimile communications of any type do not require the prior consent, express or otherwise, of the recipient where the communication is (i) from a tax-exempt nonprofit organization and (ii) relates to one or more of the organizations duly authorized tax-exempt nonprofit purposes." Petition, at page 1. AHCA strongly supports ASAE's request and urges prompt action thereon by the FCC, in order to prevent tax-exempt nonprofit organizations from incurring additional and unnecessary costs and degrading the quality of services provided to their members, without resulting in added protection to the public against the receipt of unsolicited advertising.

AHCA is a federation of 48 affiliated long-term care provider associations representing more than 12,000 nonprofit and for-profit nursing facilities, skilled nursing facilities, assisted living and residential care facilities, subacute providers and intermediate care facilities for the mentally disabled.

AHCA also is a tax-exempt nonprofit organization. Tax-exempt nonprofit organizations comprise a discrete and unique class of entities in the U.S. and exist exclusively to serve and provide value to their members and constituencies, who, almost invariably, seek out membership and/or involvement in the organization. Tax-exempt nonprofit organizational membership and participation provides important benefits to members and other interested individuals by facilitating their pursuit of a variety of personal, professional, business,

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social and educational goals. All tax-exempt nonprofit organizations have quasi-public purposes and many exist exclusively to serve the public.

General Comments:

The FCC's revised rules require a business to obtain the prior, written and signed consent of facsimile recipients, as well as the disclosure of a fax number by the recipient, before that business may send a facsimile. *See* revised 47 CFR § 64.1200(a)(3). The FCC's new rules also eliminate the established business relationship (EBR) exception for facsimiles, meaning that an organization may not send faxes with any advertising content—even in response to an individual's oral request—without first obtaining written, signed permission from the intended recipient.

While this rule may well make sense in the general commercial market, it seems clearly unreasonable when applied to tax-exempt nonprofit organizations, which are not trying to solicit sales from the public, by bombarding their fax machines with unwanted advertisements for printer ink, two-for-one lunch specials or last-minute vacations to the Bahamas. Rather, tax-exempt nonprofit entities regularly send materials of potential interest only to their membership. For example, AHCA recently promoted its October 2003 convention that offers symposia on such subjects as *Nursing Facility Payment Update* and *From Critical to Comfortable: Surviving Florida's Mandatory Staffing Statutes*. These promotions are of great interest to AHCA's members, but of no interest whatsoever to the general public. Accordingly, AHCA would never consider faxing information about these symposia randomly or to the general public. The public simply does not need protection from AHCA's fax machines. The FCC should, therefore, revise its rule to exempt any facsimiles from a tax-exempt nonprofit organization as long as the organization is acting consistent with its established tax-exempt purposes.

Although the FCC has extended the effective date of these new facsimile rules to January 1, 2005, there remain substantial new paperwork burdens on tax-exempt nonprofit organizations of all sizes through the imposition of time limits on the EBR exception, which came into effect as of August 25, 2003. The FCC's revised definition of an EBR may mean that organizations may not send facsimiles containing advertising material to any individual starting eighteen months after the individual's last transaction or three months after the individual's last inquiry or application with the organization. *See* revised 47 CFR § 64.1200(f)(3). This revised EBR definition requires every organization that sends faxes with advertising content—as broadly defined—to keep detailed, continuously updated records of their members' or prospects' last inquiries and/or transactions.

Apart from numerous other problems with the FCC's revised facsimile rules, the FCC has grossly underestimated the impact of these new information collection and record keeping requirements on both small and large organizations, and particularly tax-exempt nonprofit organizations. Faxing information of all kinds, including marketing and promotional solicitation for professional and educational resources, annual meetings, etc., has become an integral part of every tax-exempt nonprofit organization's activity. AHCA relies heavily on facsimile communications to its members and other interested parties to provide them with the information and services that they have already expressed an interest in receiving when they made the decision to become members of AHCA.

Further, compliance with these requirements will inflict substantial time and expense burdens on AHCA and its members. Obtaining the necessary written consents required under the new rules alone will require significant human resource and financial expense. Add to this the expense of tracking the dates of each contributor's or members last transaction, application or solicitation and AHCA and its members face burdens that will further strain already tight human and financial resources.

For example, while AHCA knows which members are current in their membership dues payments or annual contribution(s), these records generally are not integrated with records of those who pay to attend a seminar, purchase a publication or register for the annual meeting. Establishing and maintaining such record keeping compliance practices would take away significant human and financial resources from the organization's valuable tax-exempt nonprofit activities.

The exact time and expense costs on tax-exempt nonprofit organizations admittedly are difficult to calculate, but they undoubtedly will be significant and long lasting. In any event, they will assuredly be substantially more than the FCC's incomprehensibly low estimate of one hour per year per business (*i.e.*, thirty minutes to obtain all necessary prior, written, signed consents and thirty minutes to update continuously records of last individual transactions, applications and inquiries.)

For all of these reasons, AHCA strongly urges the FCC to reconsider its fax advertising rules as proposed by ASAE. That action would result in a rule that protects the public from receiving unwanted commercial advertisements, while protecting the ability of tax-exempt nonprofit organizations to continue serving the interests of their members. We appreciate the opportunity to comment on this critical matter.

Sincerely,

Charles H. Roadman II, MD, CNA
President and CEO